



# MISSOURI CHAMBER

OF COMMERCE AND INDUSTRY

VIA FACSIMILE: (573) 526-1146

December 16, 2004

Ms. Marlene Kirchner, Commission Secretary  
Missouri Clean Water Commission  
Water Protection Program  
P.O. Box 176  
Jefferson City, Missouri 65102

Re: Comments on Regulatory Impact Report for Proposed Rule Amendment to 10 CSR 20-7.031, Water Quality Standards

Dear Ms. Kirchner:

The Missouri Chamber of Commerce and Industry is pleased to submit the following comments on the Regulatory Impact Report (RIR) that was prepared for proposed changes to Missouri's water quality standards found in 10 CSR 20-7.031. The RIR was prepared by the Missouri Department of Natural Resources (MDNR) for public comment pursuant to Section 640.015 Revised Statutes of Missouri (RSMo), and is dated October 13, 2004. The Chamber's comments relate solely to the whole body contact recreational (WBCR) component of the RIR.

While the Chamber supports the MDNR's efforts to regulate the discharge of treated effluent in order to protect the water quality of rivers and lakes in Missouri, the Chamber also believes that rules and standards must be based on scientifically sound, transparent, and peer-reviewed science. Moreover, reliable cost-benefit analyses of several alternatives should be used so that the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the proposed rule can be identified. Without such informed prioritization, it is difficult to ensure that the greatest public benefit can be achieved in the most efficient manner.

The RIR fails to present a cogent reason for the MDNR to designate all waters listed in 10 CSR 20-7.031 Table G and Table H as WBCR at an estimated cost to Missouri industries and municipalities of \$304,866,000 dollars. The Chamber holds this opinion for two reasons: First, the RIR does not identify any tangible benefits to justify its enormous costs. Second, the RIR does not identify and consider a reasonable number of

regulatory alternatives. Because the RIR does not identify any tangible benefits, and does not evaluate several alternatives, the Chamber also believes the RIR is not compliant with Section 640.015 RSMo.

**1. The RIR does not identify specific benefits**

The RIR fails to identify specific economic and environmental benefits that can result by adopting the proposed rule changes. Under Section 640.015(2)(5) RSMo, RIR's are to provide a "comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction, which includes both economic and environmental benefits."

The RIR estimates the cost of implementing the proposed rule changes to be \$304,866,000 dollars, but it does not identify any tangible benefits. Instead, it merely makes a hypothetical interrogative statement asking, "What price is good health worth?" Clearly this falls short of the requirements of Section 640.015(2)(5).

For over two decades, the Environmental Protection Agency (EPA) has been required by law and executive order to perform cost-benefit analysis on many of the regulations it has issued. Executive Order 12866 and the Unfunded Mandates Reform Act (P.L. 104-4) are the two primary requirements. As a result of these requirements, the Office of Budget and Management (OMB), EPA, and other Federal entities have published numerous guidance documents on how to perform cost-benefit analysis. Upon review of the RIR's references, it appears that none of these guidance documents was used by the MDNR in preparation of the RIR. At a minimum we believe the document entitled "Guidelines for Preparing Economic Analyses," U.S. EPA, EPA 240-R-00-003, September, 2000, should have been consulted. A copy of this guideline can be downloaded via the internet for free at <http://yosemite.epa.gov/ee/epa/eed.nsf/webpages/Guidelines.html>.

In consideration of this comment, the RIR should be rewritten to identify the specific economic and environmental benefits that result from implementing the proposed rule changes.

**2. No alternatives are considered in the RIR**

The RIR presents only one regulatory approach and offers no alternative approaches for comparison as required by Section 640.015 RSMo. This point is referenced throughout the RIR and is specifically stated in Section 14: "No other approaches were examined." The Chamber finds the MDNR's decision to not include alternatives troubling, particularly when Section 640.015(2)(7) of the statute clearly requires them to do so. In

addition, instead of offering the required comparison between alternatives, Section 14 of the RIR instructs the reader to use the public comment period to suggest alternative approaches for the MDNR to consider. Section 14 also specifies that all alternatives suggested by the public must be fully explained and supported by sufficient rationale.

Certainly a function of the public comment period is to obtain new ideas from the public that are currently not being considered, but the Chamber believes the MDNR's request has gone too far in pushing the required Section 640.015 RSMo requirements back on the public. Specifically, the statute does not authorize the MDNR to shift their responsibility of identifying alternatives to the public.

Based on reading Section 640.015 RSMo, the Chamber believes the RIR should show that the MDNR has considered a reasonable number of regulatory alternatives, including the alternative of not regulating. The RIR should also provide the MDNR's reasoning for selecting the proposed regulatory action over such alternatives. In consideration of the balance between thoroughness of analysis and practical limits of the MDNR's capacity to carry out such an analysis, the Chamber acknowledges that the number and choice of alternatives to be selected for detailed cost-benefit analysis is ultimately a matter of judgment.

In consideration of this comment the RIR should be revised to present more than just one alternative to make the RIR compliant with Section 640.015 RSMo, and to give the public the opportunity to make a meaningful comparison between several alternatives.


On a final note, the Chamber believes the RIR does not clearly identify EPA references used. The RIR does not provide readers with sufficient information to obtain and review risk assessment data that MDNR relied on to prepare the RIR. The Chamber's contention is not with the bibliographical references to sources used but instead to instances where the RIR presents no actual risk data, but instead directs the reader to "EPA's administrative record" to obtain the risk data. Although the chamber's preference is for the RIR to be a standalone, technically self-supporting document, it acknowledges that under certain circumstances it is appropriate for the RIR to direct the reader to other sources for more detailed analysis and/or support of a topic. However, when such instances are appropriate, the RIR must clearly identify those sources with enough detail so that the reader can easily locate them and access the specific information referenced within them.

As the RIR is currently written, it is impossible for a reader to obtain the risk assessment data used because the RIR makes only generic reference to various EPA guidance documents and "EPA's administrative record." These generic references to various EPA sources are problematic for a number of reasons. First, except for a few exceptions in Section 2 of the RIR, the reader is directed to numerous EPA guidance documents without identifying relevant sections and/or chapters within them. For instance, Section 11 of the RIR directs the reader to Appendix A of the RIR for more information on sources of scientific information used in evaluating risk. Appendix A does provide useful internet addresses to obtain Adobe copies of each of the EPA documents, but no specific chapter or section within each is identified. This is a problem since the five EPA guidance documents referenced comprise almost 500 pages of technical material. Second, in several instances the RIR directs the reader to obtain additional information on risk assessment by reviewing EPA's administrative record. Sections 10, 11, and 12 make this generic reference to the administrative record without providing any clue to the reader of exactly which guidance document, Federal Register preamble, Federal rule, etc. the MDNR used.

The Chamber believes that in consideration of the above comment, the MDNR should revise the RIR to include the actual risk assessment data used to make decisions. In those instances where it is not practicable to present all the risk data used directly in the RIR, the RIR should provide justification for not including the data, and should clearly identify each source where the data resides with enough detail so that the reader can easily locate it and access the specific information referenced therein.

The Missouri Chamber of Commerce and Industry appreciates the opportunity to provide these comments for your consideration on the October 13, 2004, RIR prepared by the MDNR for proposed changes to Missouri's water quality standards found in 10 CSR 20-7.031.

Sincerely,

A handwritten signature in black ink, appearing to read "R. H. Rocha".

Richard H. Rocha  
Chairman Environmental Committee  
Missouri Chamber of Commerce and Industry